No. _____

In the

Supreme Court of the United States

_____

Hakeem Aziz Wiley,

Petitioner,

v.

United States of America,

Respondent.

_____

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

If a party's objection necessarily entails his claim on appeal, has the party preserved the appellate claim under Federal Rule of Criminal Procedure 51(b)?

PARTIES TO THE PROCEEDING

Petitioner is Hakeem Aziz Wiley, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Hakeem Aziz Wiley seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is reported at *United States v. Wiley,* No. 25-10261, 2025 WL 3207515 (5th Cir. November 17, 2025)(unpublished). It is reprinted in Appendix A to this Petition. The district court's judgement and sentence is attached as Appendix B.

JURISDICTION

The unpublished panel opinion and judgment of the Fifth Circuit were entered on November 17, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

Federal Rule of Criminal Procedure 51(b) reads:

> (b) Preserving a Claim of Error. A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

STATEMENT OF THE CASE

A. Facts and District Court Proceedings

On November 21, 2022, Petitioner Hakeem Aziz Wiley sold 53.68 grams of Fentanyl to an undercover agent, and arrested him. *See* (Record in the Court of Appeals, at 243). On March 21, 2023, police arrested Petitioner again, this time at his apartment. *See* (Record in the Court of Appeals, at 244). He consented to a search of his apartment and submitted to interrogation, during which he admitted vastly greater involvement in drug trafficking than previously known to the authorities. *See* (Record in the Court of Appeals, at 244). In that conversation, he disclosed prior sales of 50,000 Fentanyl pills (five kilograms), five pounds of marijuana, 1,000 Adderall pills, 1,000 grams of THC in cartridge form, and 20 ounces of cocaine. *See* (Record in the Court of Appeals, at 244-245). Police also found a gun in the apartment and 51.5 Fentanyl pills, plus unspecified quantities of cocaine and marijuana. *See* (Record in the Court of Appeals, at 244).

Petitioner pleaded guilty to one count of conspiring to traffic Fentanyl. *See* (Record in the Court of Appeals, at 139-150). He entered a plea agreement bearing the following language:

> The government agrees that USSG § 1B1.8 is applicable to the defendant. Any information provided by the defendant and not otherwise known by the Government, other than that charged in the superseding indictment, in connection with the defendant's assistance to the government, including and debriefing and testimony, will not be used to increase the defendant's Sentencing Guideline level or used against the defendant for further prosecution, if, in the opinion of the United States Attorney, the defendant has met all of the defendant's obligations under the plea agreement and provided full, complete, and truthful information and testimony. However nothing revealed by the

> defendant during the defendant's debriefings and testimony would preclude the defendant's prosecution for any violent crime.

(Record in the Court of Appeals, at 233-234).

A Presentence Report used the drug quantities Petitioner admitted on March 21, 2023, to determine his Guideline range. *See* (Record in the Court of Appeals, at 245-247). It applied a base offense level of 34, a final offense level of 35 (after applying two upward adjustments of two points each for possessing a gun and maintaining a drug-involved premises and a three point reduction for acceptance of responsibility), and a criminal history category of I. *See* (Record in the Court of Appeals, at 247-248). This yielded a Guideline range of 168-210 months imprisonment. *See* (Record in the Court of Appeals, at 255). Had it excluded the quantities disclosed in March 2023, the base offense level would have been just 24, the final offense level would have been just 25, and the Guideline range just 57-71 months. *See* (Record in the Court of Appeals, at 247-248); USSG 5A.

Defense counsel objected to the use of drug quantities disclosed during the March 2023, interrogation. *See* (Record in the Court of Appeals, at 261-271). He contended that the plea agreement and USSG §1B1.8 precluded the use of this information to increase his Guideline range. *See* (Record in the Court of Appeals, at 261-271). According to the objection, the plea agreement "memorialized" an oral agreement made between the arresting officer – a state agent in contact with federal prosecutors – and Petitioner at the time of the debriefing, which oral agreement, it argued, protected him from the use of these statements. *See* (Record in the Court of Appeals, at 265-269). As respects the written agreement, the defense compared it to

that in *United States v. Smith*, No. 21-10674, 2022 WL 715487 (5th Cir. 2022)(unpublished), a previous case of the Fifth Circuit. *See* (ROA265). The objection noted that the Fifth Circuit found the agreement in *Smith* ambiguous, and then said that Petitioner's written agreement was not materially different. It said:

> How does the Supplement in *Smith* compare to the instant case? What follows is the language in Mr. Wiley's [plea agreement] … The italicized text appears to be the only material difference between the two [agreement]. But *Smith* integrated/incorporated this same language into the [agreement] via the reference to U.S.S.G. § 1B1.8(b)(1); thus, the difference may not be material at all.

(Record in the Court of Appeals, at 265). It then argued that the ambiguity in the written agreement should be read in the defendant's favor. (Record in the Court of Appeals, at 265).

The government, *see* (Record in the Court of Appeals, at 277-286), and Probation, *see* (Record in the Court of Appeals, at 308-309), opposed the objection, *see* (Record in the Court of Appeals, at 277-286), and the district court overruled it, *see* (Record in the Court of Appeals, at 175). The court then varied downward from the Guideline range and imposed 90 months imprisonment. *See* (Record in the Court of Appeals, at 205). It did not say that the sentence would have been the same had it sustained the objection. *See* (Record in the Court of Appeals, at 176). To the contrary, and at the defendant's request, it withheld its customary statement disclaiming the Guidelines. *See* (Record in the Court of Appeals, at 176).

B. Proceedings in the Court of Appeals

Petitioner appealed, contending that the district court erred in considering his statements from the March 2023 interrogation to boost his Guidelines and sentence.

See Initial Brief in *United States v. Wiley*, No. 25-10261 (5th Cir. Filed June 26, 2025)("Initial Brief"). He contended that the statements were immunized by the plea agreement, notwithstanding the fact that he gave them before the execution of that agreement. *See* Initial Brief, at **5-17. As he noted, the plea agreement protected "[a]ny information provided by the defendant and not otherwise known by the Government…" (Record in the Court of Appeals, at 233-234). And the March 2023 statements were, he pointed out, "provided by the defendant." *See* Initial Brief, at **5-6. And while the plea agreement did not protect information "otherwise known by the Government," the plain meaning of the word "otherwise" means "in a different way." *Id.* at *9, & n.2 (citing *www.dictionary.com, entry=otherwise, definition 1, https://www.merriam-webster.com/dictionary/otherwise, last visited June 26, 2025*; *Begay v. United States*, 553 U.S. 137, 144 (2008)(citing Webster's Third New International Dictionary 1598 (1961) to show that "otherwise" means "in a different way or manner"); *Fischer v. United States*, 603 U.S. 480, 490–91 (2024)("When the phrase 'otherwise obstructs, influences, or impedes any official proceeding' is read as having been given more precise content by that narrower list of conduct, subsection (c)(2) (of 18 U.S.C. §1512) makes it a crime to impair the availability or integrity of records, documents, or objects used in an official proceeding **in ways other than those specified** in (c)(1).")(emphasis added)). Because the drug transactions admitted in the March 2023 interrogations became known to the government through the defendant, he contended, they were not "otherwise known by the Government." *See id.*

The government argued that the written agreement did not protect information given to it by the defendant before the plea. *See* Appellee's Brief in *United States v. Wiley*, No. 25-10261, at *8 (5th Cir. Filed July 30, 2025)("Response Brief"). But it also contended that Petitioner preserved no error in a violation of the written agreement. *See* Response Brief, at **7-8. In its view, Petitioner's district court objection relied exclusively on oral promises by the interrogating officer. *See id.*

In response to the government's preservation argument, Petitioner offered two rejoinders. First, he said that his district court objection necessarily claimed the protection of the written agreement – the objection said that the objection "memorialized" a prior oral agreement in its unambiguous terms, and therefore necessarily asserted that the written terms offered him protection. *See* Reply Brief in *United States v. Wiley*, No. 25-10261, at *2 (5th Cir. Filed August, 2025)("Reply Brief"). Second, he reproduced the portion of the objection specifically referencing the written agreement. *See* Reply Brief, at **2-3. This discussion of the written agreement made no reference to any prior oral promise, and quite explicitly asserted that the text of the agreement alone barred the use of his pre-plea statements. *See id.*

The court of appeals held that the defendant preserved no violation of the written agreement, having claimed only the protection of an oral agreement with his interrogator. *See* [Appendix A, at 1]; *United States v. Wiley*, No. 25-10261, 2025 WL 3207515, at *1 (5th Cir. Nov. 17, 2025)(unpublished). The entirety of its reasoning on the preservation question was as follows:

> At sentencing, Wiley did not object on this basis. Instead, he argued that his post-arrest statements were part of an oral cooperation agreement

> with the Government that was later memorialized in the written plea agreement and supplement. Thus, we review for plain error.

Wiley, 2025 WL 3207515, at *1. It then concluded that the written agreement did not clearly or obviously immunize Petitioner's pre-plea statements, and accordingly affirmed on plain error. *See id*. It gave no hint of the likely outcome on plenary review. *See id.*

REASONS FOR GRANTING THE PETITION

The decision below conflicts with the precedent of this Court and multiple courts of appeals. Clear and well-enforced standards for issue preservation protect the fairness of proceedings and this Court's ability to maintain the uniformity of federal law.

1. **The decision below, in common with other Fifth Circuit precedent regarding the standards for preservation of error, conflicts with the precedent of this Court and that of at least three other courts of appeals.**

   Federal Rule of Criminal Procedure 51(b) states that:

   > A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection.

This case concerns the phrase "the grounds for that objection." Understandably, no federal circuit permits parties to change the fundamental grounds for an objection on appeal. *See United States v. Capps*, 112 F.4th 887, 891 (10th Cir. 2024)(collecting cases that say a party may not change the theory advanced on appeal). On the other hand, parties are not expected simply to copy the text of a trial objection without elaboration. Rather, the appellate forum – which offers the chance to write a 13,000 word brief and 40 days to do it, *see* Fed. RR. App. 28, 31 -- is designed for research

and deliberation. Inevitably, when drafting and presenting an appellate argument, parties will shed light on the same issues discussed below from new angles.

This Court addressed the adequacy of objections in *Douglas v. Alabama*, 380 U.S. 415, 422 (1965). That case did not construe Federal Rule of Criminal Procedure 51, but rather addressed the adequacy of an objection in state court to assert federal constitutional rights. There, this Court:

> applied the general principle that an objection which is ample and timely to bring the alleged federal error to the attention of the trial court and enable it to take appropriate corrective action is sufficient to serve legitimate state interests, and therefore sufficient to preserve the claim for review here.

Douglas, 380 U.S. at 422 (citing *Davis v. Wechsler*, 263 U.S. 22, 24 (1923); *Love v. Griffith*, 266 U.S. 32, 33-34 (1924)).

This Court drew essentially the same line when construing Rule 51, requiring only sufficient notice to the district court of the defendant's position, not a fully developed appellate argument. *See Holguin-Hernandez v. United States*, 589 U.S. 169, 173-175 (2020). As this Court observed, the Rule's drafters, "chose not to require an objecting party to use any particular language or even to wait until the court issues its ruling." *Holguin-Hernandez*, 589 U.S. at 174. Thus, when evaluating preservation under the Rule, it held that "the question is simply whether the claimed error was 'brought to the court's attention." *Id.*

The decision below is out of step with this standard, requiring something much more than "bringing an error to the district court's attention." As the court below understood the Rule, any small shift in a party's position defeats preservation.

Petitioner contended in district court that an interrogating officer had implicitly promised him immunity for statements made during their conversation. *See* (Record in the Court of Appeals, at 265-269). Crucially, he further contended that the plea agreement memorialized this agreement, guaranteeing immunity for the same statements. *See* (Record in the Court of Appeals, at 264, 267). In support of the claim, he pointed to similarities between the written agreement in his case, and a different written agreement previously held to be ambiguous on the same issue. *See* (Record in the Court of Appeals, at 265).

It is not logically possible to accept all of Petitioner's assertions in district court without concluding that the written plea agreement granted immunity for his pre-plea statements. After all, if the written agreement memorialized an oral immunity agreement, it necessarily provided immunity. Indeed, the defense grounded this claim of immunity in the text of written plea agreement, comparing it to another agreement the Fifth Circuit described as ambiguous on the question. Faithful application of this Court's controlling standard – whether the defendant brought the plea agreement's promise of use immunity to the district court's attention, *see Douglas*, 380 U.S. at 422; *Holguin-Hernandez*, 589 U.S. at 174 -- would clearly require the conclusion that Petitioner preserved the argument he made on appeal.

The court below required more. It found the error unpreserved because Petitioner relied on an oral promise from his interrogator. *See* [Appendix A, at 1]; *United States v. Wiley*, No. 25-10261, 2025 WL 3207515, at *1 (5th Cir. Nov. 17, 2025)(unpublished). Because Petitioner subtracted this claim from his appellate

position, focusing instead only on the written agreement, the Fifth Circuit applied plain error review. *See Wiley*, 2025 WL 3207515, at *1. It did not ask whether the district court, accepting the defendant's objection, would have understood the written agreement to provide immunity. *See id.* Had it done so, it could not have failed to answer in the affirmative.

The opinion is not a one-off holding on the question of preservation. Rather, it reflects the consistent practice of the court below, at least insofar as it deals with claims brought by the defendant rather than the government. A review of recent preservation decisions will show its extreme and demanding standards for error preservation.

In *United States v. McGuire*, 163 F.4th 882, 896–97 (5th Cir. 2025), the defendants objected to a summary chart in a drug trafficking case on the grounds that it did not reflect all of the information found in the relevant phones. *See McGuire*, 163 F.4th at 896–97. On appeal, they contended that it was not mathematically accurate. *See id.* The Fifth Circuit concluded that this small change of position defeated error preservation, and applied plain error, though it ultimately reversed in part as to some defendants. *See id.* at 896-97, 920-21.

In *United States v. Horton*, __F.4th__, 2026 WL 217124 (5th Cir. Jan. 28, 2026), the defendant received an upward variance from his Guideline range 10-16 months imprisonment to a sentence 240 months imprisonment, likely because on his customers overdosed on fentanyl. *See Horton*, 2026 WL 217124, at **1-2. He objected to any consideration of the fentanyl overdose in determining his sentence, but offered

no further objection to the sentence after it issued. *See id.* On appeal, he contended that the district court failed to explain the massive upward variance. *See id.* at **2-3.

In spite of the clear logical relationship between the defendant's objection and his appellate failure- -to-explain claim -- (*if the district court was not considering the fentanyl overdose, why did it choose a sentence so far over the Guideline range?*) -- the Fifth Circuit held the appellate claim unpreserved. *See id.* at *2. In its view, and contrary to the logic of *Holguin-Hernandez*, nothing the defendant says *before* the sentence can preserve error in the pronouncement of sentence. *See Horton*, 2026 WL 217124, at *2 ("His prior objection—to considering L.G.'s death—had nothing to do with the quality of the court's explanation of the sentence. Nor could it have, given that the objection occurred *before* the court even imposed sentence.")(emphasis in original); *compare Holguin-Hernandez*, 589 U.S. at 174 ("The rulemakers, in promulgating Rule 51, intended to dispense with the need for formal 'exceptions' to a trial court's rulings. …The question is simply whether the claimed error was 'brought to the court's attention.'")(internal citations omitted).

Notably, in other circuits, when the defendant objects to consideration of a putatively improper factor, the court of appeals will conclude that "[s]ubsumed within those objections is the clearly implicit charge that the district court's explanation rested on improper considerations." *United States v. Serrano-Berrios*, 38 F.4th 246, 250 (1st Cir. 2022); *accord United States v. Reyes-Correa*, 81 F.4th 1, 10 (1st Cir. 2023); *see also United States v. Lynn*, 592 F.3d 572, 578 (4th Cir. 2010)("By drawing

arguments from § 3553 for a sentence different than the one ultimately imposed, an aggrieved party sufficiently alerts the district court of its responsibility to render an individualized explanation addressing those arguments, and thus preserves its claim."). This demonstrates that the Fifth Circuit's extreme approach to error preservation leads it to conclusions other circuits have explicitly rejected.

Finally, in *United States v. Lerma*, 123 F.4th 768 (5th Cir. 2024), the defendant received a ten-fold variance over the top of his Guideline range. *See Lerma*, 123 F.4th at 772. The defense objected to the sentence, pointing out the degree of variance. *See id.* The Fifth Circuit held that "[s]imply objecting that the sentence was a 'tenfold increase' is nothing more than a statement of mathematical fact and was not sufficient to preserve procedural error" in the failure to explain such an extreme sentence. *Id.* This conclusion again placed the Fifth Circuit in conflict with the preservation decisions of another court adjudicating materially identical facts. *See United States v. Rivera-Berrios*, 968 F.3d 130, 133–34 (1st Cir. 2020) (where "appellant's counsel made clear that he believed that the sentence was 'excessive' and that the court had not articulated any cognizable grounds that would support an upward variance," failure-to-explain claim was preserved); *United States v. Perez-Delgado*, 99 F.4th 13, 20–21 (1st Cir. 2024)(counsel's objection "to the sentence that has been handed down today for being ... procedurally unreasonable, and the term of imprisonment specifically being over ... the recommended guidelines in the PSR," preserved failure-to-explain claim).

The Fifth Circuit's recent holdings regarding error preservation – and certainly its holding in this case – in fact conflict with the law of at least three other circuits. The First Circuit, for one, has repeatedly stated that "[t]o preserve a claim of procedural sentencing error for appellate review, a defendant's objection need not be framed with exquisite precision." *Rivera-Berrios*, 968 F.3d at 133–34; *accord Perez-Delgado*, 99 F.4th at 20–21; *United States v. Rodriguez*, 146 F.4th 48, 55, n.4 (1st Cir. 2025); *United States v. Mercado-Canizares*, 133 F.4th 173, 179–80 (1st Cir. 2025); *United States v. Melendez-Hiraldo*, 82 F.4th 48, 53–54 (1st Cir. 2023); *Reyes-Correa*, 81 F.4th at 10; *United States v. Garcia-Perez*, 9 F.4th 48, 52–53 (1st Cir. 2021); *United States v. Guzman-Ceballos*, 144 F.4th 1, 6–7 (1st Cir. 2025); *United States v. Cordero-Velazquez*, 124 F.4th 44, 52 (1st Cir. 2024); *United States v. Calderon-Zayas*, 102 F.4th 28, 36 (1st Cir. 2024); *United States v. Colon-Cordero*, 91 F.4th 41, 49–50 (1st Cir. 2024); *United States v. Espinoza-Roque*, 26 F.4th 32, 35–36 (1st Cir. 2022).

Adjudicating a government appeal, the Fifth Circuit made a similar statement: "[w]e have never required a party to express its objection in minute detail or ultra-precise terms." *United States v. Pineiro*, 470 F.3d 200, 204 (5th Cir. 2006). When confronted with appeals by the defendant, however, it has consistently found a fatal distinction between the objection made in district court and the claim made on appeal, even as it repeated this language from *Pineiro*. *See Horton*, 2026 WL 217124, at *2; *McGuire*, 163 F.4th at 897; *Lerma*, 123 F.4th at 772; *see also United States v. Tapia*, 946 F.3d 729, 733 (5th Cir. 2020)(using same language before finding that defendant's references to plea agreement did not amount to an objection); *but see United States v.*

DeLaGarza, 460 F. App'x 406, 409 (5th Cir. 2012)(unpublished)(finding preservation where objection and appellate claim seemed to be identical).

By contrast, the First Circuit has generally honored its holding -- that objections need not be laid out with "exquisite precision" – by finding preservation in imprecise objections. *See Rivera-Berrios*, 968 F.3d at 133–34 (finding preservation and granting relief); *Perez-Delgado*, 99 F.4th at 20–21 (same); *Rodriguez*, 146 F.4th at 55, n.4 (same); *Mercado-Canizares*, 133 F.4th at 179–80 (same); *Reyes-Correa*, 81 F.4th at 10 (same); *Garcia-Perez*, 9 F.4th at 52–53 (same); *Guzman-Ceballos*, 144 F.4th at 6–7 (same); *Colon-Cordero*, 91 F.4th at 49–50 (same); *Calderon-Zayas*, 102 F.4th at 36 (finding preservation but affirming on the merits); *Melendez-Hiraldo*, 82 F.4th at 53–54 (finding some of defendant's arguments preserved, but affirming); *but see Cordero-Velazquez*, 124 F.4th at 52 (finding no preservation and affirming); *Espinoza-Roque*, 26 F.4th at 35–36 (finding no preservation and vacating on other grounds).

Included among these First Circuit cases are nine, by counsel's count, in which the defendant's general objection to the sentence length, or to factors that influenced its severity, was held to imply an objection to the district court's failure to explain the sentence. *See Rivera-Berrios*, 968 F.3d at 133–34; *Perez-Delgado*, 99 F.4th at 20–21; *Rodriguez*, 146 F.4th at 55, n.4; *Mercado-Canizares*, 133 F.4th at 179–80; *Reyes-Correa*, 81 F.4th at 10; *Garcia-Perez*, 9 F.4th at 52–53; *Colon-Cordero*, 91 F.4th at 49–50; C*alderon-Zayas*, 102 F.4th at 36; *Melendez-Hiraldo*, 82 F.4th at 53–54. Here, the argument on appeal followed as a matter of logical necessity from the defendant's

trial objection; a written agreement that "unambiguously" "memorializes" a putative oral agreement necessarily protects the defendant to the same degree as the claimed oral agreement. Clearly, the objection in this case met the standards for preservation in the First Circuit, and the case would have been heard on the merits in that jurisdiction.

To like effect is the law of the Fourth Circuit, where Petitioner's case also would have been resolved on the merits. Citing *Holguin-Hernandez* and *Moore's Federal Practice* § 651.03[2], the Fourth Circuit court has said that "a general objection can suffice so long as context makes the finer, more-specific bases obvious." *United States v. Boyd*, 5 F.4th 550, 556 (4th Cir. 2021). Further, it has repeatedly opined that "'variations' on arguments made below may be pursued, so long as the appealing party 'asked both courts to evaluate the same fundamental question.'" *Boyd*, 5 F.4th at 556 (quoting *In re Under Seal*, 749 F.3d 276, 288 (4th Cir. 2014) (discussing *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992)).

These standards plainly would have called for a merits resolution of Petitioner's case. Petitioner's district court objection "made obvious" his claim that the written agreement protected his pre-plea statements, if it did not say so explicitly. Further, both the district court and appellate claims addressed "the same fundamental question," namely whether the government could use his pre-plea statements against him, given the promises it had made.

Finally, the Eighth Circuit will also reach those appellate claims necessarily implied by the party's objection, even if not explicitly stated. Thus, the Eighth Circuit

reached the merits of a defendant's cross-examination claim under Federal Rule of Criminal Procedure 32.1 even though he raised it in district court as a due process claim. *See United States v. Johnson*, 710 F.3d 784, 788 (8th Cir. 2013). Because the Rule codifies the due process requirement, the defendant's objection, if accepted, would have necessarily implied a violation of Rule 32.1. *See Johnson*, 710 F.3d at 788. Here, Petitioner's district court objection necessarily implied his appellate claim, if it did not raise that claim independently. It would have generated a merits decision (and guidance to the parties regarding the meaning of a standard plea agreement) had it been heard in the Eighth Circuit.

2. The issue merits this Court's intervention.

The decision below reflects an extreme view of Rule 51 which contradicts both the guidance of this Court and the law of other circuits. The issue is important and merits this Court's attention. The question of how specific an objection must be is recurring, potentially implicated in every federal criminal case.

Further, the use of unforgiving standards for preservation threatens to deprive the parties of meaningful review of their judgments, relegating their claims to the unforgiving realm of plain error review. *See Puckett v. United States*, 556 U.S. 129, 135 (2009)(acknowledging that "[m]eeting all four prongs (of plain error review) is difficult, 'as it should be.'")(quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83, n. 9 (2004)). As this case demonstrates, it deprives the parties and the district court of valuable information about recurring in their districts.

It is also important that this Court set clear standards for preservation – and that it enforce those standards -- because it rarely or ever reviews the merits of legal issues presented on plain error review. Accordingly, courts of appeals may be tempted to evade review by this Court by treating reasonably well-preserved issues as though they were not preserved, and thus preventing this Court from doing its job of securing federal uniformity. Or, particularly busy courts of appeals, such as the one below, may be tempted to use chary standards of preservation to make cases easier to resolve, and thereby reduce their workload. Clear and well-enforced standards can lessen this temptation as well.

Alternatively, if courts of appeals do offer merits review based on insufficiently specific objections, there is a risk that parties will try "'sandbagging' the court—remaining silent about his objection and belatedly raising the error only if the case does not conclude in [their] favor." *See Puckett*, 556 U.S. at 135. Either way, the standard for preservation should be as clear as reasonably possible, so that conscientious counsel know what is expected of them, and do not inadvertently forfeit the rights of their clients. As this Court recognized in *Black v. United States*, 561 U.S. 465 (2010), fairness and Federal Rule of Criminal Procedure 57(b) require that standards of preservation be made clear to the parties and counsel before findings of waiver or forfeiture. *See Black,* 561 U.S. at 474 (citing Fed. R. Crim. P. 57(b)); Fed. R. Crim. P. 57(b) ("No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law [or] federal rules ... unless the alleged

violator was furnished with actual notice of the requirement before the noncompliance.").

3. The present case is an ideal vehicle to address this issue.

As discussed above, Petitioner's objection would likely have been found sufficient in at least three circuits, well-presenting the issue that has divided the courts of appeals. Further, the court of appeals gave no intimation that Petitioner's claim would have failed on plenary review, deciding the case on the sole ground that law was not clearly or obviously settled in his favor. *See Wiley*, 2025 WL 3207515, at *1. As such, there is a substantial chance that the standard of review, and, in turn, the sufficiency of the objection, determined the outcome.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 12th day of February, 2026.

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